

1 DISTRICT COURT, COUNTY OF JEFFERSON, STATE OF COLORADO

2 Case No. 90CV3966, Division 9

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4 REPORTER'S PARTIAL TRANSCRIPT
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6 WESTERN STATES MINERALS CORPORATION, a Utah
7 corporation,

8 Plaintiff,

9 vs.

10 AOMSA(UTAH), INC., a Delaware corporation; JUMBO MINING
11 CO., an unincorporated association; ED B. KING, a/k/a
12 E. B. KING; and JANET KING,

13 Defendants.
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15 This matter came on for trial to the Court on
16 Monday, May 4, 1992, before the HONORABLE TOM WOODFORD,
17 Judge of the District Court.

18 This transcript contains only the direct
19 examination of George Reeves.

20 FOR THE PLAINTIFF: Lee Foreman, Reg. No. 2567
21 Rachel Bewils, Reg. No. 12723

22 FOR THE DEFENDANTS: Kirk Mueller, Reg. 16746
23 Z. Lance Samay
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1 (The following proceedings were held in open
2 court at 1:56 p.m. Prior proceedings were had and not
3 transcribed herein, pursuant to request.)

4 THE COURT: Are you ready to proceed to put
5 on the plaintiff's case, Mr. Foreman?

6 MR. FOREMAN: Yes, I am. As a procedural
7 matter what I've got here--and I suspect Mr. Samay has
8 something similar--is I have a book of exhibits, and it
9 would be my proposal, with the Court's permission of
10 course, to give you the exhibit book. They are marked,
11 and we can make a record on the way in terms of moving
12 the admission.

13 Now, it may well turn out that somewhere
14 along the way, a document in this book is ultimately not
15 received. And for purposes of the record, I think
16 there's a way later to keep track of which ones later are
17 not, so they do not become included in the court record
18 as having been received. But I have the book all
19 numbered according to the numbers we want, and I can give
20 one to you and one to the witness.

21 THE COURT: This agreeable with you?

22 MR. SAMAY: Yes, it is, and I have a
23 corresponding request.

24 THE COURT: I suspected. Very well. I like
25 to proceed in that manner. I think it's helpful, and I

1 will not look at any exhibits until they have been
2 received in evidence unless something mechanically comes
3 up so that I must look at something or inadvertently see
4 something. But I'll keep track.

5 MR. SAMAY: Sorry for the weight.

6 THE COURT: They told me there was no heavy
7 lifting with this job.

8 MR. FOREMAN: I would call as my first
9 witness, George Reeves.

10 (The witness was sworn.)

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1 GEORGE ELTON REEVES,
2 called as a witness by the plaintiff herein, having first
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FOREMAN:

6 Q Would you please state your full name for the
7 record, sir.

8 A George Elton Reeves.

9 Q And, Mr. Reeves, what is your occupation or
10 profession?

11 A I am an attorney at law.

12 Q And are you licensed to practice law in the
13 state of Colorado?

14 A I am.

15 Q When were you licensed?

16 A 1976.

17 Q And do you have any specialties that are part
18 of your work?

19 A My specialty is mining law.

20 Q Mr. Reeves, are you acquainted with a
21 business known as Western States Minerals Corporation?

22 A Yes, I am.

23 Q We'll call them Western States from here on
24 out. Can you say how long you have been acquainted with
25 them?

1 A Oh, probably about five or six years. I'm
2 just guessing on that.

3 Q Have you in fact performed legal services for
4 that outfit on various occasions?

5 A I have.

6 Q Were you contacted in June 1988 by Western
7 States personnel?

8 A Yes, I was.

9 Q And can you recall the nature of that initial
10 contact?

11 A The initial contact was one from Mr. Cerny
12 suggesting the possibility of my doing an agreement for
13 Western States.

14 Q What did they tell you initially, or what did
15 Mr. Cerny tell you initially about the nature of the job
16 he wished you to undertake?

17 A That it was a purchase from Western States of
18 a mine in Utah.

19 Q All right. And did you agree to undertake
20 that piece of work?

21 A I did.

22 Q What did you know when you originally agreed
23 to undertake this particular piece of work?

24 A In what regard?

25 Q What did they tell you? What was your

1 mission? What did you know about the sale of the mine?
2 What did you do?

3 A I got from Mr. Cerny a handwritten sheet, or
4 perhaps two sheets, of the terms of the agreement that I
5 was to draw up.

6 Q All right. Would you please take a look in
7 the exhibit book which I will put in front of you, and in
8 particular, sir, I direct your attention to Exhibit
9 No. 1, and there is both a 1-A and 1-B that are attached
10 to that. Will you take a look at the documents in both
11 1-A and 1-B?

12 A Okay.

13 Q Have you ever seen those documents before?

14 A Yes, I have.

15 Q And what are the documents in 1-A and 1-B?

16 A Well, 1-A is a copy--and apparently somewhat
17 reduced by copying--of the first page of the handwritten
18 notes that I referred to.

19 Q And what about 1-B?

20 A And 1-B is a copy of both pages of the
21 handwritten notes that I referred to.

22 Q All right. And in addition in 1-B is there
23 also a third page?

24 A Yes. There's a third page which has a list
25 of a number of materials which were provided to me at the

1 same time.

2 Q Have you seen those documents before?

3 A Yes, I have.

4 Q All right. And are those in fact--were they
5 presented to you at any point in time?

6 A Well, these were sent to me when Western
7 States asked me to do the agreement on the Drum Mine.

8 Q Do those contain information you were given
9 by Mr. Cerny at the time that you were engaged?

10 A Yes.

11 MR. FOREMAN: Move the admission of 1-A and
12 1-B.

13 MR. SAMAY: No objection.

14 THE COURT: Plaintiff's Exhibits 1-A and 1-B
15 are received in evidence.

16 (Plaintiff's Exhibit Nos. 1-A and 1-B were
17 admitted into evidence.)

18 Q (By Mr. Foreman) Have you had the
19 opportunity to review those documents here since you've
20 been here today?

21 A Not since I've been here today.

22 Q Have you reviewed them in preparation for
23 coming here today?

24 A Actually I have not, no.

25 Q Why don't you take time to read them over a

1 little bit.

2 A How far? 1-A and 1-B only?

3 Q Yes.

4 A Okay.

5 Q Can you tell the Court what kind of
6 information you had about what you were supposed to be
7 drafting up, having reviewed those documents?

8 A Well, this is the information from which I
9 drafted the documents.

10 Q All right.

11 A And these are the terms that I incorporated
12 into the documents that I drafted.

13 Q All right. And this was based on information
14 you received from, obviously, Mr. Cerny, who presented
15 these to you?

16 A It was based on these documents which I
17 received from Mr. Cerny.

18 Q Sir, I'd like to direct your attention to the
19 documents that are contained in Defendant's Exhibit No. 2
20 and ask you to review those, sir.

21 A Okay.

22 Q Have you had the opportunity to do so?

23 A Yes.

24 Q What is Plaintiff's Exhibit No. 2?

25 A It is the final executed copy of the Option

1 Agreement between Western States and Asoma, to which are
2 attached a number of exhibits.

3 Q As to the Option Agreement itself, is this a
4 document that you yourself drafted?

5 A That's correct.

6 Q As a result of the engagement that we have
7 been discussing here?

8 A The main part of the Option Agreement, the
9 substantive part of the Option Agreement, I drafted.

10 Q And attached thereto are a number of exhibits
11 and lists of what appear to be lists of claims. Did you
12 receive those as well in connection with your work?

13 A I received from Western States
14 Exhibit A. I'm not sure whether I received Exhibit B and
15 C and D or not. I received from Western States the Drum
16 Mine asset list, which is attached to the bill of sale,
17 which is Exhibit G. Those two items I know, Exhibit A,
18 for example, and the attachment to Exhibit G, I had
19 received and merely attached to the documents.

20 Q I understand. So the list of claims itself,
21 was it your understanding that Western States was
22 actually compiling that?

23 A Yes.

24 Q And you were incorporating it by reference in
25 your Option Agreement?

1 A Well, it was incorporated by attaching the
2 exhibit to the Option Agreement.

3 Q All right. I direct your attention within
4 these documents to Exhibit F, which is a Quitclaim Deed
5 and Assignment.

6 A I have it.

7 Q Is this a document which you yourself drafted
8 as well?

9 A I did.

10 Q And similarly I direct your attention to
11 Exhibit G, which purports to be a bill of sale.

12 A Yes, I drafted that.

13 Q You drafted that as well. What about
14 Exhibit E, the water rights assignment?

15 A I believe I drafted that, yes.

16 MR. FOREMAN: I'd move the admission of
17 Exhibit 2.

18 MR. SAMAY: No objection but for one
19 qualification. I'm not quite sure whether this exhibit
20 has the correct asset list. I note that only from the
21 changes in the dates on the asset list that is described
22 as Exhibit A. Subject to that qualification, I have no
23 problem with the underlying agreement. I think that's
24 what Mr. Foreman's purpose is, is to get the underlying
25 agreement in.

1 THE COURT: I will admit Plaintiff's
2 Exhibit 2 in its entirety, but if Mr. Samay wishes to
3 produce evidence later that Exhibit A isn't accurate, he
4 may have leave to present that evidence, and I'll
5 reconsider it when and if counsel asks me to.

6 (Plaintiff's Exhibit No. 2 was admitted into
7 evidence.)

8 MR. SAMAY: Thank you, your Honor.

9 Q (By Mr. Foreman) Mr. Reeves, talking about
10 the Option Agreement itself, there is some information
11 contained therein as to a purchase price. Do you see
12 that on the second page of the Option Agreement?

13 A Yes, I do.

14 Q And that price you put in as a result of
15 what?

16 A As a result of two things. One, there was
17 the handwritten notes that I obtained from Mr. Cerny that
18 we discussed, which I think are Exhibit 1-B, and at some
19 later date there was an agreement regarding whether the
20 \$30,000 should or should not come off of the purchase
21 price of \$1 million, and this paragraph on page 2 of
22 Exhibit 2 reflects that subsequent agreement regarding
23 the \$30,000.

24 Q All right. And in fact up above in the area
25 of the "therefore" paragraph, the second full paragraph

1 on the second page, there is a reference to the \$30,000.
2 Where did you first hear that the \$30,000 was to be the
3 price for the option?

4 A That was in the material Mr. Cerny provided
5 me, the handwritten pages which are Exhibit 1-B.

6 Q Okay. Would it be fair to say that all of
7 the particulars that are contained within the Option
8 Agreement itself were placed in by you as a result of
9 information you were furnished by Western States?

10 A Either information I was furnished by Western
11 States or the boilerplate that seemed necessary to
12 implement the whole thing.

13 Q Now, explain that to me. What do you mean by
14 boilerplate, and at what point do you kind of put such
15 language into that type of agreement?

16 A On page 4, for example, there's an inurement
17 clause which says the covenants are binding on the
18 parties, their representatives, and assigns. There's a
19 governing law clause that says it will be governed by the
20 law of the State of Colorado. Those things were not
21 specifically addressed in the information I got from Mr.
22 Cerny, but they're the sorts of things that need to be in
23 the agreement, and I just put them in.

24 Q Let me direct your attention back to the
25 quitclaim deed, which is Exhibit F to this document. And

1 in particular, sir, I'm going to ask that you direct your
2 attention to the full third paragraph of that quitclaim
3 deed.

4 A Sorry. The third full paragraph?

5 Q Paragraph 3.

6 A Okay.

7 Q You're familiar with this paragraph, I take
8 it?

9 A Yes, I am.

10 Q In particular I direct your attention to the
11 last sentence of that paragraph. Is that the way you
12 intended to draft that document, sir?

13 A That is not the way I intended to draft that
14 document.

15 Q Is that in fact a mistake?

16 A That is a mistake.

17 Q And how should it have read, consistent with
18 the instructions that you were given?

19 A It should have read that "Assignee shall be
20 responsible for all reclamation on the load mining claims
21 and the properties."

22 Q And within the context of the understanding,
23 who would the assignee have been?

24 A At the time this was first drafted, the
25 assignee would have been Mr. King and Mrs. King, doing

1 business as Jumbo Mining Company.

2 Q And there came a time later when you learned
3 that there was a preference to take it in the name of
4 Asoma?

5 A That's correct.

6 Q Was it your understanding that Asoma was also
7 affiliated with the Kings?

8 A I knew there was a connection of some kind,
9 yes.

10 Q The paragraph as it reads and the last
11 sentence of paragraph 3, is the writing that appears in
12 this document consistent with the instructions that you
13 received from Western States?

14 A The last sentence of paragraph 3 is not
15 consistent with the instructions on the second page of
16 the document I received from Mr. Cerny.

17 Q And so again it is inconsistent with Mr.
18 Cerny's notes themselves that you received?

19 A Well, inconsistent with this document. I
20 don't know if you call this his notes or not but
21 inconsistent with the document that is Exhibit 1-B.

22 Q Is the last sentence of paragraph 3
23 consistent with your understanding of the agreement
24 between the parties?

25 A No, it is not.

1 Q Just a mistake?

2 A Mistake.

3 Q Did you at any time have any conversations
4 with Mr. King on the subject of reclamation?

5 A I did not.

6 Q Now, the Option Agreement apparently bears a
7 date of June 30; is that correct?

8 A That's correct.

9 Q Do you know whether or not there was
10 ultimately a quitclaim that was executed?

11 A Yes, there was.

12 Q Let me direct your attention to Exhibit
13 No. 3, please. This document, sir, appears to be an
14 executed copy of the document that appears as Exhibit F
15 to the prior document. Can you examine it and tell me if
16 you recognize it and if there are any changes between the
17 two?

18 A The only change, I believe, is the fact that
19 the heading "Exhibit F" was deleted, so that the document
20 which is Exhibit 3 no longer has a heading saying
21 "Exhibit F," and obviously it has been executed and
22 acknowledged. Those are the only changes that I'm aware
23 of.

24 Q And the quitclaim deed that appears to be
25 executed as Exhibit 3, is it or is it not a document

1 prepared by you?

2 A It's a document prepared by me.

3 Q And again as--

4 MR. FOREMAN: First of all, move the
5 admission of Exhibit 3.

6 MR. SAMAY: No objection.

7 THE COURT: Plaintiff's Exhibit 3 is
8 admitted.

9 (Plaintiff's Exhibit No. 3 was admitted into
10 evidence.)

11 Q (By Mr. Foreman) As to paragraph 3 and the
12 last sentence, is this the way you intended to draft it?

13 A It is not.

14 Q And is it your understanding that this was
15 the agreement of the parties on this issue of
16 reclamation?

17 A It is my--not my understanding that as
18 drafted it is the agreement of the parties.

19 Q All right.

20 A That was as stated here.

21 Q Did there come a time, sir, when you became
22 aware or were advised of a possible error with regard to
23 this document?

24 A Yes.

25 Q Can you tell me how that came to pass, what

1 you recall about that?

2 A I got a message from Mr. Cerny saying that
3 there was a mistake in the document. This was a
4 telephone message. I did not talk to Mr. Cerny, but I
5 received a telephone message from Mr. Cerny saying there
6 was a mistake in the document, and that was February 24,
7 1989.

8 Q I direct your attention to Exhibit 4 in the
9 exhibit book. Do you recognize Exhibit 4?

10 A Yes, that is the telephone message I
11 received.

12 Q And are these types of telephone messages
13 kept by you in the ordinary course of your business?

14 A Yes.

15 Q And in fact does this record information that
16 is put down in this document contemporaneously with when
17 it occurred?

18 A Yes.

19 Q And in fact is this particular phone
20 message--do you recognize it as having been generated and
21 kept within the regular course of your business?

22 A Yes, I do.

23 MR. FOREMAN: Move the admission of
24 Exhibit 4.

25 MR. SAMAY: No objection.

1 THE COURT: Exhibit 4 is admitted.

2 (Plaintiff's Exhibit No. 4 was admitted into
3 evidence.)

4 Q (By Mr. Foreman) Do I understand, sir, this
5 is the first you had ever heard of a supposed error in
6 the document?

7 A That's correct.

8 Q Did you have a conversation with Mr. Cerny
9 after you got this phone message?

10 A I did.

11 Q What do you recall Mr. Cerny saying?

12 A I don't know that I can recall the exact
13 conversation, but we discussed the fact that there was in
14 fact an error in the documents, and I believe at that
15 time we discussed measures to be taken to correct the
16 error.

17 Q What did you say and do with regard to the
18 conversation? What did you suggest?

19 A I suggested doing a correction deed which
20 would correct the error that appeared in that particular
21 paragraph.

22 Q Did you in fact undertake the preparation of
23 that kind of a document?

24 A I drafted a correction deed, I believe, that
25 day and sent it to Mr. Cerny. Whether by mail or by

1 messenger I don't recall, but I sent a copy of a
2 correction deed to Mr. Cerny.

3 Q Now, I'm going to direct your attention,
4 please, to Exhibit No. 5 and ask if you can identify
5 Exhibit No. 5.

6 A Exhibit No. 5 is a fax that I had received
7 from Mr. Cerny which in turn transmitted a copy of a
8 letter from Mr. Cerny to Mr. King.

9 Q Did you in fact have any conversations with
10 Mr. Cerny concerning No. 5, or do you recall?

11 A I know that I had some conversations with Mr.
12 Cerny at one time or another regarding the question of
13 bonding. Whether I had a conversation at this particular
14 time on this particular subject I don't recall right now.

15 Q But you do recall receiving Exhibit 5 about
16 the time that it indicates?

17 A I'm--not that I recall it, but obviously I
18 did.

19 MR. FOREMAN: Move the admission of 5.

20 MR. SAMAY: No objection.

21 THE COURT: Plaintiff's Exhibit 5 is
22 admitted.

23 (Plaintiff's Exhibit No. 5 was admitted into
24 evidence.)

25 MR. FOREMAN: No further questions.

1 THE COURT: You may examine, Mr. Samay.

2 MR. SAMAY: Thank you, your Honor.

3 (Further proceedings were had and not
4 transcribed herein, pursuant to request of counsel.)

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